

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

SETSUKO M. GEIS, )  
 )  
Appellant, )  
 )  
vs. ) NO. 21424  
 )  
 )  
UNITED STATES OF AMERICA )  
and MASAKO GEIS, )  
 )  
Appellees. )

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ON APPEAL FROM THE JUDGMENT OF THE UNITED  
STATES DISTRICT COURT FOR THE WESTERN  
DISTRICT OF WASHINGTON, NORTHERN DIVISION

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HONORABLE WILLIAM T. BEEKS, JUDGE

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PETITION FOR REHEARING IN BANC

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Pursuant to Rule 40, Rules of Appellate Procedure,  
respondent Masako Geis petitions the Court for a rehearing en  
banc.

Petitioner contends the Court overlooked or misappre-  
hended the following points of law and fact:





## FACT

1. The fact that the deceased Walter Geis clearly intended his second wife, Masako Geis, to have every benefit to which he was entitled whether he knew of its existence or not.

(Finding of Fact No. 11)

2. The fact that it is a logical impossibility to require a service man to do an overt act regarding a benefit which he reasonably believes does not exist.

3. The fact that the retention, custody, and review of insurance records is in the hands of the Veteran's Administration and the requirement of an overt act of intent should only be imposed when these records clearly demonstrate the deceased was aware of the scope of his benefits.

## LAW

1. The Court failed to give proper effect, under the circumstances, to the policy stated in Mitchell v. U.S., 165 F. 2d 758 (5th Cir. 1948), and cited with approval by this Court in Behrens v. U.S. 299 F.2d 662 (9th Cir. 1962). That policy is to "brush aside technicalities" when "intention to change the beneficiary is proved to the hilt" (as the majority opinion admits was done in this case).



2. The Court failed to give the proper weight to the decision of the Veteran's Administration, which concluded that the deceased had sufficiently demonstrated his intent. Their decision is to be reversed only for "clear and compelling reasons." Owens v. U.S. 251 F.Supp 114, 118 (D.S.C. 1966)

3. The Court has applied the rationale of Behrens, supra, (where the decedent knew of his benefits) to a situation where the weight of evidence -- and the trial court's findings of fact -- indicate he did not know his insurance was in force.

## ARGUMENT ON FACTUAL POINTS

### ONE THROUGH THREE

The trial court's finding of fact number 11 states:

"11. Although the insured was unaware of his National Service Life Insurance in the several years immediately preceding his death and believed that the insurance had lapsed, after considering all of the evidence the Court finds that the insured had no intent that Setsuko Geis receive any of his benefits, and that he did intend his wife Masako receive all benefits to which he was entitled, including any National Service Life Insurance in force.

The Court further finds that the insured did everything reasonably necessary under the circumstances to effectuate that intent, and that his affirmative acts were sufficient to change the beneficiary of his National Service Life Insurance policy from Setsuko Geis to Masako Geis."



In its majority opinion, the Court states it is convinced that if Geis had known he had insurance benefits, he would surely have changed them over to Masako.

THE MAJORITY THUS ADMITS INTENT TO  
BENEFIT ONLY MASAKO IS CLEARLY DEMON-  
STRATED; BUT DECLINES TO GIVE THIS INTENT  
ANY EFFECT.

In its opinion, the majority is placing the burden of knowing his insurance status on the service man, although no actual insurance policy is ever issued to him or placed in his possession, and the custody, review and administration of his insurance program is by law in the hands of the Veteran's Administration.

Yet, when this Administration fails to adequately inform  
the service man of his insurance status, the persons whom he  
clearly intends to benefit must bear the loss.

#### ARGUMENT ON LEGAL POINTS

##### ONE THROUGH THREE.

In its majority opinion, the Court never considers the weight to be given the decision of the Veteran's Administration,



although this point was argued both in the trial court and the appellee's brief. (Brief of Appellee Geis, p. 14) The Veteran's Administration found that the decedent Geis had the requisite intent and had overtly demonstrated this intent to make Masako Geis the recipient of his insurance benefits.

On numerous occasions, this court has stated the administrative decision must be upheld even though this court, had it been the trier of fact, might have ruled differently.

THERE IS NO CLEAR OR COMPELLING  
REASON FOR REVERSING THE DECISION OF THE  
VETERAN'S ADMINISTRATION.

Secondly, the court applies the Behrens requirements to the facts at bar, even though it was conclusively shown that the decedent was not aware that his NSLI policy was still in force.

Rather than brush aside technicalities, the  
court adds another; namely, that the decedent  
be at all times aware of his insurance status.

The only information Geis had from his "insurance company" was an ambiguous communication six years before he died (Exhibit #2 ). He received no premium notices, no literature, no inquiries, no letters, no communication of any





sort between 1956 and 1962. In many states, one is allowed to presume a wife is dead when she has disappeared for seven years. Was it unreasonable for the decedent to presume his insurance was "dead" when he had heard nothing for six years?

WHERE THE DECEDENT IS NOT AWARE OF  
HIS INSURANCE, THE COURT SHOULD  
EFFECTUATE HIS CLEARLY MANIFESTED  
GENERAL INTENT.

The majority fails to do so.

Respectfully submitted,

CASEY & PRUZAN

By

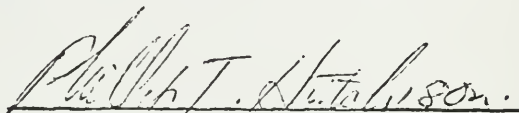
*Phillip T. Hutchison*  
Phillip T. Hutchison

Attorneys for Appellee



CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion, the foregoing brief is in full compliance with those rules.



Phillip T. Hutchison  
Of Counsel for Appellee.

